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IN THE

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SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1982

No. _____

CARMELA M. STELLA, M.D.

APPELLANT

v.

MERCY HOSPITAL, PORT HURON,
MICHIGAN, et all

APPELLEES

ON APPEAL FROM THE UNITED STATES COURT
OF APPEALS FOR THE SIXTH CIRCUIT.

CARMELA STELLA, MD
IN PROPRIA PERSONA
2586 Aberdeen Ave.
Los Angeles, Ca. 90027
(213) 462-7329

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QUESTIONS PRESENTED FOR REVIEW

1. - Whether 28 USC section 2415 (c) is applicable to the present action: "Actions to establish right of possession of property have no bar." And whether a statute which limits the protection of a constitutional right, - the right to property, - is unconstitutional. (Referring to 15 USC section 15b.)

2. - Whether Appellees may knowingly conceal evidence which disproves the legitimacy of their business and medical reasons, - and thereafter claim such legitimacy.

3. - Whether violations of the fifth, sixth and seventh amendment of the constitution , and violation of CCP 581 have occurred in the course of the proceedings involving this action.

4. - Whether a statute of limitation
can be properly applied to the
prosecution of a felony. (1974 Amendment
of the Sherman Act.)

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IN THE
SUPREME COURT OF THE UNITED STATES

CARMELA M. STELLA, M.D.

Appellant

vs.

MERCY HOSPITAL, PORT HURON,
MICHIGAN, a Corporation Assumed
Name for the Sisters of MERCY
HEALTH CORPORATION, a Michigan
nonprofit corporation, RONALD
BALBOA, M.D. JOHN H. MILLER,
M.D., JOHN C. SULLIVAN, M.D.,
JOSEPH A. BARRS, M.D., JAMES G.
WOLTER, M.D., JAMES W. COPPINGS,
M.D., JAMES J. SNIDER, M.D.,
JOHN A. YOUNGS, M.D., GORDON H.
WEBB, M.D., SISTER MADELINE SAGE,
MICHAEL SCHWARTZ, SISTER MARIAN
MERTZ, SISTER MARY PATRICE SINNOT,
jointly and severally,

Appellees.

The Appellant , Carmela Stella,
hereby appeals from the final judgement
of the Sixth Circuit Court of Appeals,
entered in these proceedings on November
24, 1982. (Petition for Rehearing).

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit appears in the Appendix at page A-1.

The opinion of the United States District Court for the Eastern District of Michigan, Southern Division, appears in the Appendix at page A-11.

JURISDICTION

The Appellant invokes this Court jurisdiction pursuant to 28 USC section 2403 (a), and 28 USC section 1254 (1).

A question on the constitutionality of a Statute was raised by the Appellant CARMELA STELLA, M.D., in a Request for a Hearing en Banc, filed with the Sixth Circuit Court of Appeals on June 25, 1982.

Certification of the above question to the Attorney General, - in compliance with Rule 44 of appellate procedures, - was requested from the Clerk of the

same Court with letter dated September 14, 1982.

No answer either upholding or denying the constitutionality of the Statute was given by the Court of Appeals; - nor has any opinion of the Attorney General been brought forth on the question raised.

The Court of Appeals for the Sixth Circuit has also failed to solve the contradiction existing between two statutes both applicable to the present case.

STATUTES AND REGULATIONS INVOLVED

28 USC, section 2415 (c)

15 USCS, section 15b.

42 USC section 1983

CCP 581

15 USCS section 45 (b) Federal Trade Commission Act, 38 Stat. 719, section 5 as amended.

This action has been presented in Court in defense of a property right : - 28 USC section 2415 (c) - specifically states that actions to establish title or right of possession of property have no bar : - "Nothing herein shall be deemed to limit the time for bringing an action to establish title to, or right of possession of property."

Such statute is in contradiction with 15 USCS section 15b, a statute of limitation applied to the Antitrust Act.

The Court of Appeals has dismissed our actions against three of the Hospitals sought to be joined as defendants for "conspiracy to restrain trade", - on the base of the above statute of limitation.

42 USC section 1983 clearly states: -
" Every person who, - under colour of any statute, causes any citizen to be subjected to the deprivation of any rights secured by the Constitution (in this case a property right) shall be liable for redress to the party injured in an

action at law , suit in equity, or other proper proceeding."

We submit to this Court that a statute that limits the protection of a constitutional right, - a right to property, - is unconstitutional.

We also submit that a statute of limitation cannot be properly applied to the prosecution of a felony : By a 1974 Amendment, Congress has declared a violation of the Sherman Act to be no longer a misdemeanor, but a "felony".

We are invoking the jurisdiction of this Court under 28 USC section 1254 (1), - to review criminal conduct by the Attorney General of the State of Michigan : The aiding and abetting "knowing concealment" of evidence in this case.

"Knowing concealment" of evidence in the course of a court proceeding is a "fraud" and a "felony".

A State officer, guilty of criminal behaviour in the performance of a public duty, - neither represent the State, nor enjoys of its sovereign immunity. (Ohio ex. rel. Seney v. Swift & Co. (1921 CA6 Ohio) 270 F. 141, Cert. den. 257 US 633, 66 S. Ct 22, 1 Ohio L Abs 36)

Also under 28 USC section 1254 (1) we request review of refusal by District Court Judge to enforce Appellant's subpoenas to obtain discovery, - forcing Dr. STELLA to have recourse to a Freedom of Information and Privacy Act request to obtain the needed discovery.

Review is also requested of the dismissal of this suit by summary judgement, - prior to jury trial , in violation of the seventh amendment of the Constitution which protects a citizen's "inviolable" right to jury trial.

Summary judgement cannot be granted where matters of statute are not involved, -

without allowing the evidence to be presen-

ed to a jury.

Review is requested of the refusal of a State Agency, - the Michigan Department of Licensing and Regulation , to honour a request made under the Freedom of Information and Privacy Act for disclosure of "evidence and witnesses". Such refusal violates the sixth amendment of the Constitution .

"Any information used to deny an individual any rights, privileges or benefits to which he is entitled under Federal Law, - shall be provided and is not exempt from disclosure pursuant to 5 USC 552 a (k) (2). Code of Federal Regulations, 28 section 16, 42 (2) revised November 1, 1981.

Review is finally requested of refusal by the Sixth Circuit Court of Appeals to enforce discovery : - Abetting "knowing concealment of evidence", fundamental to the decision of a case , - is a violation of due process. Refusal of evidence and witnesses violates the sixth amendment of

Constitution.

We are aware that in the tradition of the United States Supreme Court, an Appeal is granted under either section 2403 (a), for review of a constitutional question, - or under section 1254 (1) , for review of the merits of the case.

For compelling reasons of Justice in this case, - we are requesting review under both sections 2403 (a) and 1254 (1).

STATEMENT OF THE CASE

The present action was brought to Court by DR. STELLA, appellant in this case, - on a complaint of "conspiracy to restrain trade" in violation of section 1 and 2 of 15 USC, - otherwise known as the Sherman Antitrust Act.

The complaint was brought against Mercy Hospital, Port Huron, Michigan and all the Appellees named in this action.

After years of delays due to enormous political pressures applied upon DR. STELLA's attorneys, - the case was first presented on November 14, 1978 to the St. Clair Circuit Court for the State of Michigan, and subsequently moved on January 23, 1980 to the Federal Court.

Legal defense was refused by a dozen of attorneys because of the estimated amount of time and money the suit would require; and because the suit was considered a "politically inconvenient" , "uphill fight against the establishment". (quote)

Dr. Stella has assumed the defense "in propria persona".

FACTS MATERIAL TO THE CONSIDERATION
OF THE QUESTIONS PRESENTED

Carmela Stella, M.D., is a woman physician, and only one of two women physicians who had staff privileges both at St. Joseph's Hospital in Mt. Clemens and Mercy Hospital, Port Huron, Michigan.

A vicious controversy arose in both hospitals concerning referral of surgical patients, and transferral to the University Hospital of surgical cases who had been mishandled by local surgeons. A group of surgeons in those hospitals claiming the right to "force" referrals to less qualified surgeons, by general practitioners; - and the hospital claiming the right to obstruct transferral to a University Hospital, if such transferral posed a risk of malpractice liabilities to the hospital.

When Dr. Stella refused to give in to pressures and threats of retaliation, - ("I will show her who I am." - Peter Kane, M.D., Chief of Surgery at St. Joseph's Hospital) - Dr. Stella's staff privileges were curtailed.

An utter disregard for both substantive and procedural due process has been shown all along in the proceedings involving this action, - the Defense advancing even the preposterous claim, that "due process"

does not apply in Court, to antitrust actions.

Dr. Stella's privileges were first curtailed by St. Joseph Hospital in December 1971, the "official reason" given for such curtailment "non-attendance" to medical meetings : - Bylaws of the Hospital did not require but only encouraged attendance to such meeting, by the interdepartmental staff to which Dr. Stella belonged. Dr. Stella had in truth attended such meetings, but had not signed in her attendance on flying pieces of paper , because nobody had advised her of such requirement.

The curtailment of staff privileges was done without any previous notice or hearing: Threethousands eight hundred patients of Dr. Stella (3,800 patients), five hundreds of which were Medicare and Medicaid patients, - were denied access by the four local hospitals in concert , for a period of an entire year. This was done in the middle of a most severe epidemic of influenza: - A large number

of elderly patients with heart disease, viral pneumonias and other respiratory illnesses were refused admission, forcing Dr. Stella to treat them at home, using her office nurses as visiting nurses. The refusal extended even to a patient with severe internal bleeding.

Dr. Stella applied for privileges to the three other hospitals in the area: Port Huron General Hospital , Mercy Hospital in Port Huron and River District Hospital in St. Clair.

Port Huron General Hospital and River District Hospital denied both staff privileges, giving as the "official reason" the distance from the hospital (14 miles) - : Such reason has been ruled as unreasonable and illegal by the Courts.

Mercy Hospital, under threat to be joined in a law suit granted Dr. Stella staff privileges, but let the controversy continue:

Dr. Stella was denied by the consultant surgeons the privilege to scrub on her own cases. When several cases were mishandled by less competent surgeons, both at St Joseph Hospital and at Mercy Hospital in Port Huron and Dr. Stella transferred the patients to the University Hospital, the hospital interfered blocking such transferral, - with total disregard for the patient's life.

At this stage again Dr. Stella's privileges were suddenly curtailed without previous notice or hearing on March 10, 1976.

Before an appeal hearing had even been granted and one full year before the decision had been finalized by the Governing Board, the Hospital administrator initiated proceedings in administrative court to revoke Dr. Stella's license.

At the hearing in front of the Peer Review Committee, all members of the Committee swore under oath at the opening of the hearing and before any evidence had

been submitted, that Dr. Stella was guilty.

What good does to a person to present the evidence to a Judge who has sworn under oath you are guilty at the opening of the trial, - is a question that neither the District Court Judge, nor the Appeal Court's Judges have cared to answer.

Incredible as it may seem, - four Judges have agreed on the opinion that, - as long as you are granted the right "to speak" in front of a judge, - it doesn't matter at all if the Judge has declared you guilty at the opening of the trial.

Allegations of malpractice on the part of Dr. Stella, were given as the "official reason" for curtailment of staff privileges at Mercy Hospital.

Unfortunately for the Hospital the Administrative Court initiated immediately proceedings to investigate the facts, and upon refusal of the Hospital to cooperate

with discovery, issued two subpoenas:

- a) - Subpoena to submit " The transcripts of proceedings before Mercy Hospital Peer Review Committee."

and,

- b) - Subpoena to submit " All records of the Eastern Michigan Regional Board of the Sisters of Mercy Health Corporation, pertaining to the denial of the reappointment of Carmela M. Stella, MD, to the Medical Staff of Mercy Hospital, Port Huron."

The Hospital has refused to honour both subpoenas. (Summary Investigation Report by William F. La Rue, Chief investigator of Medical Science Unit, dated 11-30-78).

At the end of a year and a half of a dispute with Aubrey Mulling and William

La Rue of the Michigan State's Medical Investigation unit, the Hospital's Attorney bypassed such investigation unit and entered into private negotiations with two assistant attorney general : Gay Hardy and Max Hoffman.

Through such negotiations the hospital's attorney were successful in concealing the documents requested by subpoena, and in obtaining the issue of a third subpoena requesting ^{only} a "certified copy" of any and all patients records.

" Knowing concealment of evidence in a Court proceeding, is a fraud and a felony."

None of the patients' records forwarded to the Court, were "certified" as requested. (Investigation report, William La Rue, dated 11-30-78. Michigan's Attorney General files.)

Dr. John Fennessey, MD., - Member of the Michigan Board of Medicine, review-

ed such records and testified that the allegations of malpractice made by the hospital were not documented on the hospital's charts.

At the request of Max Hoffman, assistant attorney general cooperating with the hospital's attorneys, the Administrative Court dismissed the complaint without prejudice.

CCP 581 prohibits dismissal of a complaint without prejudice after the evidence has been submitted, - therefore such request by an assistant attorney general and the order of the administrative court, were both in violation of statute.

"When affirmative relief is sought, voluntary dismissal is barred unless same is consented to in writing by the party seeking the affirmative relief." CCP 581. Such consent was refused by Dr. Stella.

The Administrative Court has refused

to submit "evidence and witnesses" requested under a Freedom of Information and Privacy Act Request. (July 27, 1982.)

Such refusal violates the Sixth Amendment of the Constitution.

The Court of Appeals has failed to enforce discovery : Failure to enforce discovery of fundamental evidence, violates due process .

The Court of Appeals has disregarded

- 1) - Perjury in front of a Peer Review Committee.
- 2) - False allegations of malpractice in front of the administrative court.
- 3) - Curtailment of staff privileges on the base of false allegations, fact which caused Dr. Stella the total loss of her business and reputation, and
- 4) - Knowing concealment of evidence in the course of the

Administrative Court proceedings; - ruling "perjury", "false allegations", and "fraud", to be evidence frivolous and without merit.

It has allowed the Defendants to modify their defense, from the defense presented in administrative court, allowing them to claim in Federal Court "irreconcilable differences of opinions" as reason for curtailment of staff privileges.

Substantive due process, requires that rules or reasons be not arbitrary, or arbitrarily changed: - Nothing in the actions and defense of the hospital satisfies substantive due process.

The Hospital has concealed the evidence; arbitrarily changed its defense and its reasons in two different Courts; and in the absence of evidence expects the Court to accept its claim as "legitimate".

The District Court and the Court of Appeals have dismissed the case against Mercy Hospital and all the named Appellees on the base of two rulings of the Courts: The Robinson v. McGovern ruling (521 F. Supp. 842 (W.D.Pa 1981) affd 3rd Cìrcuit Slip Opinion # 81-2726, 5-11-82) and the Parker v. Brown ruling 317 US 341 (1943).

Neither of those two rulings is applicable to the present case: - Dr. Robinson was granted privileges by seven hospitals in the area, and refused privileges by one.

Dr. Stella was refused privileges by all four hospitals in the area, acting in concert.

The Parker v. Brown doctrine is inapplicable to Dr. Stella's case since the actions of the four hospitals preceded any state action. The Parker v. Brown doctrine is limited to action taken by the State to effectuate what otherwise

would be illegal conduct, and it can be applied only when the state action is the modus operandi. (Cantor v. Detroit Edison Co. 428 US 579 (1976)).

It remains for this Court to decide if a "difference of opinion" (accepting the claim of the Hospital on its face, without support of evidence) - if a "difference of opinion" is a legal base for depriving a person of property rights.

In this Supreme Court sit Justices who at one time or another, have dissented from the majority and recorded their dissent in writing.

I doubt the Justices in the majority consider their right to unseat from the Court their colleagues, - because they have exercised their privilege and right to dissent.

A difference of opinion in the medical management of a case, is no different than a difference of opinion in the legal management of a case.

It was five centuries ago that the distinguished physicist and astronomer Galileo, was imprisoned in Rome under threat of excommunication by the Inquisition, for "irreconciliable differences of opinion" : He claimed the earth was round and gravitated around the Sun, at a time when everybody thought the earth to be flat and fixed at the center of the universe.

There are no "dogmas" in Science, and all of us, scientists and lawyers alike, have believed that "obscurantism", "ignorance" and "prejudice" are sins of the past that should not be allowed to return.

ARGUMENT OF LEGAL ISSUES

A. The right of a physician to practice a profession is a "property right" and such defined by the Courts.

The fifth amendment of the Constitution requires that no person be deprived of his property, without due process.

There has been "no vestige" of due process in the proceedings involving this action.

The Hospital has violated every standard set forth by the Joint Commission for the accreditation of Hospitals, concerning due process in the appointment and reappointment of Medical Staff.

Compliance with such standards is a condition for the disbursement of Federal funds (Medicare, Medicaid) under the 1972 Federal Act.

B. Both District and Appeal Court have dismissed our complaint against three of the Hospitals sought to be joined as Defendants, on the base of a statute of limitation attached to the Sherman Act (15 USC section 15b).

28 USC section 2415 (c) clearly states that "actions to establish right of possession of property have no bar".

" Nothing herein shall be deemed to limit the time for bringing an action to establish title to, or right of possession of property."

To which , section 1983 of the Civil Right Act (42 USC section 1983) adds :

" Every person who, under colour of any statute subject or cause to be subjected any citizen of the United States to the deprivation of any right secured by the Constitution, shall be liable to the party injured in an action at law or any other proceedings, for redress.

Both District Court and Court of Appeal have enforced a statute which is "unconstitutional".

A statute which limits the protection of a constitutional right is "de facto" unconstitutional.

C. By a 1974 amendment of the Sherman Act, Congress has declared a violation of the Sherman Act to be a "felony", - which by definition is an offense against the State.

Statutes of limitation cannot be properly applied to the prosecution of a "felony".

D. Both District and Appeal Court have failed to enforce discovery fundamental to the decision of this case: Such, is a violation of "due process"; it is also evidence of bias. "Knowing concealment of evidence in the course of Court proceedings is a "fraud" and a "felony".

Aiding and abetting the commission of a "felony", - is judicial misconduct.

E. Dismissal of a case on its merits

without allowing the Jury to review the evidence, - violates the seventh amendment of the Constitution, which protects the "inviolable" right to Jury trial.

Two elements are fundamental in an antitrust action :

1. Damage to the public,
and,
 2. Conspiracy to restrain trade.
- The Appellees in this case, - have been guilty of both.

A group boycott is a "per se" violation of the Sherman Act.

This Court has ruled that " .. a group boycott is not to be tolerated merely because the victim is so small that his destruction will make little difference to the economy." Klor's v. Broadway-Hales Stores, 359 US 207.

It has also ruled that : -
"..neither nature of occupation, nor
any alleged public service provides

sanctuary from the Sherman Act." United
Staes v. National Society of Professional
Engineers 435 US 679 (1976) 98 S.Ct. 1355

When a blue collar man commits a
crime and steals someone else's property,
the Court promptly and harshly punishes
him.

The identical crime (destroying
another person's property) has been com-
mitted in this case by white collar men.
It seems the Courts have gone to great
lenghts to protect the criminals from
the punishment of the Law. And, - as the
Romans said, "Dura Lex, - sed Lex."
Which in plain english translates :
" The Law should be equal into all."

The property right for which I am
asking protection, - is my right to make
a living : The right to practice my
profession.

Such a right, the right to work,

is more fundamental to a citizen than the right to free speech.

It is infinitely more important, - because it more closely relate to the most basic of all human rights : The right to life.

When you have deprived a man of his means of subsistence , you have jeopardized the man's right to life.

CONCLUSION

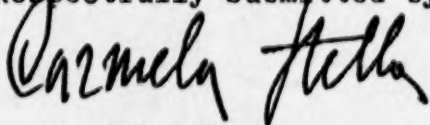
We believe, that contradictions of applicable statutes in this case, and the question of constitutionality of one such statute, - deserve review by this Court.

We also believe that "concealment of evidence" by the State of Michigan's Attorney General, as well as "refusal to submit evidence and witnesses" by the Michigan Department of Licensing,

- in addition to other numerous violation
of due process by the lower Courts, -
warrants review of this case on its merits.

On the base of the evidence submitted,
we believe reversal of the judgement of
the lower Court is a matter of Justice.

Respectfully submitted by:



Carmela M. Stella, M.D.
In Propria Persona

Dated: January 17, 1983.

Note: - All evidence submitted to this
Court was released by the Michigan
Attorney General, under a Freedom
of Information and Privacy Act
request, after being confronted
with the 1981 Code of Federal
Regulations concerning discovery
of evidence. Such evidence was
submitted to the Court of Appeals
on September 27, 1982.

Federal Trade Commission Act, 38 Stat. 719

Section 5, as amended, 15 USCS section 45 (b).

"..The Sherman Act should be contrasted with section 5 of the Federal Trade Commission Act which requires that the Commission find that the proceeding by it.. would be to the interest of the public before it issues a complaint for unfair competition." (Klor v. Broadway-Hale Stores, 359 U.S. 207)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CARMELA M. STELLA, M.D.

Plaintiff-Appellant

vs.

MERCY HOSPITAL, PORT HURON,
MICHIGAN, a Corporation Assumed
Name for the Sisters of MERCY
HEALTH CORPORATION, a Michigan
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BALBOA, M.D., JOHN H. MILLER,
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JOSEPH A. BARRS, M.D., JAMES
G. WOLTER, M.D., JAMES W. COPPINGS,
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H. WEBB, M.D., SISTER MADELINE
SAGE, MICHAEL SCHWARTZ, SISTER
MARIAN MERTZ, SISTER MARY PATRICE
SINNOT, jointly and severally,

Defendants-Appellees

ORDER

Filed: October 25, 1982

Before: KRUPANSKY and WELLFORD, Circuit
Judges; and BROWN, Senior Circuit Judge.

This pro se plaintiff, a medical doctor who maintained a general practice in the State of Michigan, appeals from a judgement granting summary judgement to the defendants and dismissing plaintiff's action. Plaintiff alleged that the defendants conspired to restrain trade and conspired to monopolize the practice of medicine in violation of section 1 and 2 of the Sherman Antitrust Act, 15 U.S.C. section 1 and 2.

The allegations were based upon the termination of plaintiff's medical staff privileges at Mercy Hospital in Port Huron, Michigan. After providing the plaintiff with many opportunity to develop her case through discovery, the district court finally concluded that there existed "overwhelming documentation" to support the plaintiff's suspension based solely on "irreconcilable differences of opinion on what constitutes appropriate or even

standard medical treatment." Although this action was brought in 1980 against Mercy Hospital and its Executive Committee for not renewing plaintiff's staff privileges in 1976, the plaintiff sought to join three other hospitals which had also denied her staff privileges in 1971, 1972 and 1974. The district court denied the motion for joinder as the claims against these hospitals were barred by the Antitrust Act's four years statute of limitations contained in 15 U.S.C. section 15(b).

After carefully reviewing the district court record and the appellate briefs submitted in this cause, this Court concludes that the plaintiff utterly failed to proffer sufficient facts to show that the defendants wilfully conspired to unreasonably restraint competition in violation of 15 U.S.C. section 1, see Davis-Watkins Co. v. Service Mdse., -- F.2d ___. slip op.

81-5057 (6th Cir. August 23, 1982);
Barnowsky Oil, Inc. v. Union Oil Co.
v. Cal., 665 F ed 74 (6th Cir. 1980)
and Fray Chevrolet Sales, Inc. v. General
Motors Corp. , 536 F.2d 683, 686 (6th
Cir.1976). or that the defendants conspired
with predatory intentand without legiti-
mate business reasons to maintain a
monopoly in violation of 15 U.S.C. section
2. Byars v. Bluff City News Co.,Inc.,
___ F2d ___, slip op. 80-5425-26 (6th Cir.
July 14, 1982). This Court has considered
and now rejects the myriad claims raised
in the plaintiff 's rambling appellate
brief for reasons which are well summari-
zed by the district court in its opinion
awarding summary judgement to the defendants.
It is clearly apparent that the plaintiff's
case is simply and totally devoid of
merit. Any inference which may liberal-
ly be inferred to aid this pro se plaintiff
is soundly rebutted by all facts contained
in this case which show that the defen

dants ' conduct was motivated by understandable and legitimate business and medical reasons. James R. Snyder Co. v. Associated Gen. Constr., E.T.C., 677 F.2d 1111, 1123-24 (6th Cir. 1982); Blair Foods, Inc. v. Ranchers Cotton Oil, 610 F. 2d 665, 672 (9th Cir. 1980). Plaintiff's claims of sexual discrimination and due process violations are also bald allegations made without any supportable facts. Finally, the district court properly decided not to join the other hospitals who refused to grant or renew plaintiff's staff privileges as her claims against them were barred by the Antitrust Act's four years statute of limitations provided in 15 U.S.C. section 15b; and, although the plaintiff may still have felt the effects of the refusals during the limitations period, "unabated inertial consequences" do not

constitute continuous antitrust violations so as to warrant the joinder of the hospitals in this action. *Barnowsky Oils, Inc. v. Union Oil Co. v. Cal.* , 665 F 2d at 81-82.

This Court has , furthermore, reviewed the plaintiff's "answer to motion to strike" construed as her renewed motion to join additional parties, and the panel has also reviewed plaintiff's motion to enforce disclosure under the Freedom of Information Act. While not reaching a decision on these additional issues which present serious questions by way of possible further impediment to the plaintiff's stating any antitrust cause of action, the court notes there may be a "state action" exemption available to defendants under the doctrine of *Parker v. Brown*, 317 U.S. 341 (1943); see also *Gambrel , et al v. Ky. Bd. of Dentistry, et al*, ___ F.2d___, (6th Cir.

Slip Opinion #80-3336, 9-24-82), and because withdrawal of medical privileges under the circumstances as a matter of law may not constitute a violation of antitrust laws. See Santos v. Columbus-Cuneo-Cabrini Med. Center, ____ F.2d __, Slip Opinion #81-2628 (7th Cir. 8-10-82); Robinson v. McGovern, 521 F. Supp.842 (W.D.Pa. 1981) affd. (3rd Cir., Slip Opinion #81-2726, 5-11-82).

Having carefully considered the matters raised therein, the Court concludes that the motions should be and are hereby denied for being frivolous and without merit. The Court has already denied plaintiff's request to join additional parties; and, plaintiff's request for disclosure of documents is not properly reviewable in the first instance in this particular appeal.

Furthermore, it appears that the

plaintiff's request for enforcement of disclosure under the Act is now moot.

This panel unanimously agrees that oral argument is not necessary in this appeal. Rule 34 (a), Federal Rules of Appellate Procedure. The district court's judgement is hereby affirmed pursuant to Rule 9 (d) (3), Rules of the Sixth Circuit, because the questions on which the cause depends are so unsubstantial as not to need further argument.

ENTERED BY ORDER OF THE COURT

John P. Hehman

Clerk

Mandate issued: November 29, 1982

Costs: None

A TRUE COPY

Attest: John P. Hehman

by Lynda L Brinson

Deputy Clerk

No. 82-1274

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CARMELA M. STELLA, M.D.

Plaintiff-Appellant

v.

MERCY HOSPITAL, ET AL.,

Defendants-Appellees

ORDER

Filed : November 24, 1982

BEFORE : KRUPANSKY and WELLFORD, Circuit
Judges; BROWN, Senior Circuit
Judge.

Upon consideration of the petition
for rehearing filed herein by the plaintiff-
appellant, the court concludes that all
the questions addressed in the petition
for rehearing were fully considered upon
the original submission and decision of

this case.

It is therefore ORDERED that the petition for rehearing be and it is hereby denied.

ENTERED BY ORDER OF THE COURT

John P. Hehman

Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CARMELA M. STELLA, M.D.
Plaintiff,

v.

MERCY HOSPITAL, PORT HURON
MICHIGAN, a Corporation Assumed
Name for the Sisters of MERCY
HEALTH CORPORATION, a Michigan
nonprofit corporation, RONALD
BALBOA, M.D., JOHN H. MILLER,
M.D., JOHN C. SULLIVAN, M.D.,
JOSEPH A. BARRS, M.D., JAMES,
G. WOLTER, M.D., JAMES W. COPPINGS,
M.D., JAMES J. SNIDER, M.D.,
JOHN A. YOUNGS, M.D., GORDON H.
WEBB, M.D., SISTER MADELINE
SAGE, MICHAEL SCHWARTZ, SISTER
MARIAN MERTZ, SISTER MARY PATRICE
SINNOT, jointly and severally

Defendants

MEMORANDUM OPINION AND ORDER

At a session of said Court held
in the Federal Building, Bay City,
Michigan, on the 5th of April, 1982.

PRESENT: HONORABLE JAMES HARVEY
United States District Judge

The above entitled matter was filed
on January 23, 1980.

On January 21, 1981, this Court issued
an order allowing plaintiff's counsel
to withdraw. Plaintiff filed a notice
of intent to proceed without an attorney
on February 23, 1981, and plaintiff has
proceeded without same since that date.
The matter is in front of this Court on
fifteen separate motions.

Plaintiff's motions are as follows:

	<u>Type</u>	Pleading No.
1.	Motion and declaration re: Joinder	35
2.	Notice of contempt of subpoena to St. Joseph's Hospital	51
3.	Notice of contempt of subpoena to Port Huron Hospital	52
4.	Notice of contempt of subpoena re: River District Hospital	53

<u>Type</u>	<u>Pleading No.</u>
5. Motion for sanctions or to compel discovery	72
6. Appendix to Motion re: Joinder:	73
7. Objection to dropping of Party Stuart Lockman from list of Defendants.	76

(The name or characterizarion of the motion is reproduced exactly as stylized by the plaintiff.)

Defendants motions are as follows:

1. Motion for sanctions or to compel discovery	29
2. Motion for summary judgment	30
3. St. Joseph's Hospital motion to quash subpoena	44
4. River District Community Authority's objections to production of documents	45
5. Port Huron Hospital 's objections to inspection and copying of designated documents and materials	47
6. Motion for sanctions or to compel discovery	68

Type

Pleading No.

- | | |
|-----------------------------------------------------------------|----|
| 7. Mercy Hospital's objections to subpoena to produce documents | 70 |
| 8. Supplemental Motion for Summary Judgement | 74 |

(All motions filed by a Party other than the plaintiff are listed under "Defendants's Motions" because these particular parties share common counsel.)

The Court will note at the outset that because of its obligations to liberally construe the pleadings of a pro se litigant and of the mandate of Fr. Civ. _ 8 (f) that "all pleadings shall be construed as to do substantial justice", plaintiff has been afforded considerable leeway in the conduct of this matter. See, Echols v. Voisine, 506 F.Supp. 15, 16 (ED Mich. 1981) . This Court will also note that it has carefully read and attempted to comprehend all the Plaintiff's pleadings, included but

not limited to (1) "plaintiff's proof of conspiracy to restrain trade"(Pleading 54) (2)"Plaintiff's proof of damage" (Pleading 55); (3) " Plaintiff's concluding argument" (Pleading 56) ; (4) "Plaintiff's Merits of the case" (Pleading 57) ; (5) Plaintiff's Legal implications of deposition of Kathryn MsMorrow, Lila Hopper and Dorothy Candela. (Pleading 58); (6), Plaintiff's Exhibits vi-9, vi-6 and W1-2 (Pleading 59); (7) Plaintiff's Exhibits X-Y-Z"(Pleading 64); and (8) "Plaintiff's Appendix to Brief on Merits of Case. (Pleading 65). Suffice it to say that this Court is thouroughly versed with everything Plaintiff has filed; whether it was done so properly or improperly. Accordingly the Court rules as follows;

Plaintiff alleges that the defendants conspited to restrain trade and conspired

to monopolized the practice of medicine in violation of Sections 1 and 2 of the Sherman Act, 15 USC 61 and 62.

These allegations are based upon the termination of her staff privileges at Mercy Hospital in Port Huron, Michigan. It should be noted that during the termination proceedings, Plaintiff had at all times a competent attorney that Plaintiff was afforded a full and fair opportunity to explain her position with respect to the charges of "inadequate medical care" . Consequently, there is only one claim before this Court and that is the antitrust allegations. (While plaintiff attempts to inject a host of other claims by inference or innuendo, the Court rejects them as having no basis in law or fact. Furthermore, even assuming such a basis exist,

the allegations fail to comply with FRs Civ. P 8 (a) (2), 12 (b) (6).)

With these basic facts, the Court turns to plaintiff's most critical motion and that is her "motion and declaration re:Joinder". In this motion plaintiff seeks to join as defendants St. Joseph's Hospital in Mt. Clemens, Michigan and River District Hospital and Port Huron Hospital, both of Port Huron, Michigan. It is clear , however, that even assuming plaintiff's claim against these hospitals were legally sufficient on their face that said claims are barred by the four years statute of limitations. 15 USC 615b; Barnowsky Oils Inc. v. Union Oil Co. of California, 665 F2d 74, 81 (CA 6, 1981). St. Joseph's Hospital denied plaintiff staff privileges in 1972. River District Hospital denied plaintiff privileges in 1972. Port Huron Hospital denied plaintiff staff privileges in 1974.

This action was filed in 1980; making all claims prior to 1976 without legal force. Marlowe v Fisher Body, 489 F2d 1057 (CA 6, 1973) ; United States v. Western Casualty and Surety Co. , 359 F2d 521 (CA 6, 1966). Accordingly, plaintiff's motion is DENIED.

Logically the Court must turn to defendants motion for summary judgement. They are:

1. Stella has failed to allege, let alone present, any facts which might establish the existence of an "antitrust conspiracy" , that is, a conspiracy intended to harm competition; and
2. Assuming that Stella could present evidence supporting a finding of a conspiracy motivated by anticompetitive intent, she has failed to raise a genuine issue of fact as to whether the alleged conspiracy had a sufficient effect on competition to constitute a violation of either Section 1 or 2 of the Sherman Act.

The Court agrees with defendants on both grounds. Plaintiff admits and there is overwhelming documentation in the file

herein to support the thesis that the plaintiff's suspension of staff privileges was based solely on irreconcilable differences of opinion on what constitute appropriate or even standard medical treatment. The Committee which decided to suspend plaintiff's staff privileges and the Regional Board which affirmed that determination after a full hearing based their decision on (1) mistakes in diagnosis, (2) inappropriate medical treatment, (3) interference with post-operative management of surgical patients, (4) repeated disregard of specialists recommendations.

Under no circumstances can these considerations of utmost medical importance be construed to form the basis or nucleus for an "antitrust conspiracy". Smith v. Northern Michigan Hospitals Inc, 518 F. Supp 644 (WD Mich. 1981); Robinson v.

McGovern , 551 F Supp 842 (WD Pa, 1981).

Additionally, plaintiff has failed to show in any pleading that the suspension of her staff privileges at Mercy Hospital prejudiced the public interest by substantially or significantly affecting commerce, Apex Hosiery Co v. Leader, 310 US 469 (1940); Ace Beer Distributors Inc v. Kohn, 318 F2d 283 (CA 6, 1963) ; or more specifically the practice of medicine in Port Huron or southeast Michigan. Harron v. United Hospital Center Inc., 522 F2d 1153 (CA 4, 1975), cert denied 424 US 916 (1976). Irrespective of the voluminous pleadings filed by plaintiff, she has failed to show a genuine issue of fact as to whether the alleged conspiracy had any effect on competition in derogation of the Sherman Act. Lamb Enterprises Inc. v Toledo Blade Co. 461 F2d 506 (CA 6, 1972); cert denied, 490 US 1001 (1972);

Parmalee Transportation Co. v. Keeshin

186 F Supp 533 (ND Ill, 1960).

Accordingly, plaintiff's motion to join certain defendants is DENIED. Defendants motion for summary judgement is GRANTED. All other motions are MOOT. Case dismissed.

IT IS ORDERED.

James Harvey

United States District Judge

A TRUE COPY

Clerk, U.S. District Court
Eastern District of Michigan

By Pauletta Hembling
Deputy Clerk



WILLIAM G. MILLIKEN, Governor

DEPARTMENT OF LICENSING AND REGULATION

SILVERMAN G. KANOVTON, Director

P.O. Box 30218

Lansing, Michigan 48209

Telephone: (517) 373-1870

July 27, 1982

Carmela Stella, M.D.
2586 Aberdeen Avenue
Los Angeles, California 90027

Re: Freedom of Information Act Request

Dear Dr. Stella:

Pursuant to your Freedom of Information request and our telephone conversation of July 20, 1982, please find enclosed a certified copy of your hearings file. The documents in this packet reflect all legal documents filed in your matter.

Investigation reports compiled by this agency are not subject to disclosure pursuant to Section 13(1)(b)(i) of the Act which is quoted as follows:

"A public body may exempt from disclosure as a public record under this act:

* * * *

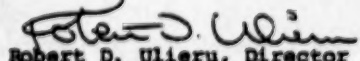
"(b) Investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following:

"(i) Interfere with law enforcement proceedings."

Because the complaint previously filed against you was dismissed without prejudice, I will not disclose the identity of witnesses and/or evidence in this matter.

If you have any further questions, please feel free to contact me.

Sincerely,


Robert D. Uliaru, Director
Office of Complaint Analysis
Bureau of Health Services
Phone: (517) 373-9196

RDU:pb

enclosures

IN THE
SUPREME COURT OF THE UNITED STATES

No. _____

CARMELA M. STELLA, M.D.

Appellant

v.

MERCY HOSPITAL , PORT HURON

ET AL.,

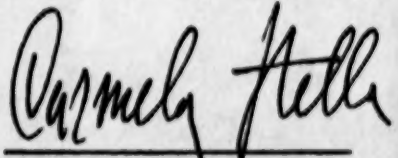
Appellees

AFFIDAVIT OF CARMELA STELLA

I, - CARMELA STELLA, - declare under penalty of perjury, - that :

1. - I am attorney in propria persona in the above captioned matter.

2. - I have written and read the attached Appeal brief, and the statements contained within are true to the best of my knowledge and belief.



CARMELA STELLA, M.D.
In Propria Persona
2586 Aberdeen Avenue
Los Angeles, Ca. 90027

Dated: January 18, 1983

IN THE
SUPREME COURT OF THE UNITED STATES

No. _____

CARMELA M. STELLA, M.D.

Appellant

v.

MERCY HOSPITAL, PORT HURON

ET AL.,

Appellees

PROOF OF SERVICE

I, CARMELA STELLA, - declare under penalty of perjury, - that :

1. - On January 20, 1983, I served
three copies of Appeal Brief upon:

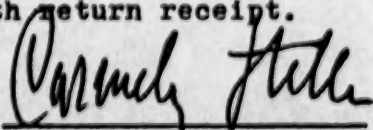
David Ettinger, Esq.

Honigman Miller Schwartz & Cohn
2290 First National Bldg.

Detroit, Michigan 48226

by placing such documents in an envelope
addressed as above and forwarding them by
registered mail with return receipt.

Dated: January 20, 1983



CARMELA STELLA, M.D.
In Propria Persona

2586 Aberdeen Avenue
Los Angeles, Ca 90027

Office-Supreme Court, U.S.
FILED
MAR 21 1983
ALEXANDER L. STEVENS,
CLERK

**IN THE SUPREME COURT
OF THE UNITED STATES**

October Term, 1982

No. 82-1237

CARMELA M. STELLA, M.D.,

Plaintiff-Appellant,

v. .

**MERCY HOSPITAL, PORT HURON,
MICHIGAN, a Corporate Assumed
Name for the Sisters of Mercy Health
Corporation, a Michigan nonprofit
corporation, RONALD BALBOA, M.D.,
JOHN M. MILLER, M.D., JOHN C.
SULLIVAN, M.D., JOSEPH A. BARSS,
M.D., JAMES G. WOLTER, M.D.,
JAMES W. COPPING, M.D., JAMES J.
SNIDER, M.D., JOHN A. YOUNGS, M.D.,
GORDON H. WEBB, M.D., SISTER
MADELINE SAGE, MICHAEL SCHWARTZ,
SISTER MARIAN MERTZ, SISTER MARY
PATRICE SINNOT, Jointly and Severally,**

Defendants-Appellees.

MOTION TO DISMISS APPEAL

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Attorneys for Defendants-Appellees

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2290 First National Building

Detroit, Michigan 48226

Phone: (313) 962-6700

QUESTION PRESENTED

Whether the District Court properly granted defendants summary judgment on plaintiff's claims under sections 1 and 2 of the Sherman Act, where plaintiff failed to present any evidence of (1) a conspiracy motivated by anti-competitive intent, (2) any adverse effect on competition or the public from defendants' actions or (3) the possession of or attempt to achieve monopoly power by defendants.

**IN THE SUPREME COURT
OF THE UNITED STATES**

October Term, 1982

No. 82-1237

CARMELA M. STELLA, M.D.,

Plaintiff-Appellant,

v.

**MERCY HOSPITAL, PORT HURON,
MICHIGAN, a Corporate Assumed
Name for the Sisters of Mercy Health
Corporation, a Michigan nonprofit
corporation, RONALD BALBOA, M.D.,
JOHN M. MILLER, M.D., JOHN C.
SULLIVAN, M.D., JOSEPH A. BARSS,
M.D., JAMES G. WOLTER, M.D.,
JAMES W. COPPING, M.D., JAMES J.
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Defendants-Appellees.

MOTION TO DISMISS APPEAL

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OPINIONS BELOW

In the Appendix to her Jurisdictional Statement, plaintiff omitted a sentence in her text on p. A-17. The corrected text on that page is as follows:

This action was filed in 1980, making all claims prior to 1976 without legal force. Marlowe v Fisher Body, 489 F2d 1057 (CA 6, 1973); United States v Western Casualty and Surety Co, 359 F2d 521 (CA 6, 1966). Accordingly, plaintiff's motion is DENIED.

Logically the Court must turn to defendants' motion for summary judgment. In their brief, defendants argue two separate and independent grounds for summary judgment. They are:

1. Stella has failed to allege, let alone present, any facts which might establish the existence of an "antitrust conspiracy", that is, a conspiracy intended to harm competition; and
2. Assuming that Stella could present evidence supporting a finding of a conspiracy motivated by anticompetitive intent, she has failed to raise a genuine issue of fact as to whether the alleged conspiracy had a sufficient effect on competition to

constitute a violation of
either Section 1 or 2 of the
Sherman Act.

The Court agrees with defendants on
both grounds.

Plaintiff admits and there is
overwhelming documentation in the file

STATEMENT REGARDING JURISDICTION

The Sixth Circuit Court of Appeals denied plaintiff Stella's appeal of the District Court's judgment against her on October 25, 1982, and denied her Petition for Rehearing on November 24, 1982. The Sixth Circuit's mandate was issued on November 29, 1982.

These decisions concerned only the antitrust grounds raised in Stella's Amended Complaint. No constitutional issues were raised by Stella in her Amended Complaint or in her pleadings to the Sixth Circuit, except for the unsupported and erroneous statement, made in an improperly filed pleading after her Brief on Appeal and Reply Brief had been filed, that "Statutes of Limitation that limit the protection of constitutional rights are unconstitutional." Suggestion of Hearing En Banc. This issue was, properly, never addressed by the Sixth Circuit.

Therefore, the only basis for this Court's jurisdiction is pursuant to 28 USC §1254(1), pertaining to grants of writs of certiorari.

STATEMENT OF THE CASE

This action was filed on January 23, 1980 in the United States District Court for the Eastern District of Michigan, Southern Division. A at 1.¹ Plaintiff Carmela M. Stella, M.D. ("Stella") alleges herein that defendants engaged in a conspiracy to restrain trade and a conspiracy to monopolize the practice of medicine at Mercy Hospital in violation of §§1 and 2 of the Sherman Act, 15 USC §§1 and 2, all claimed to arise out of Stella's loss of staff privileges to practice medicine at Mercy Hospital, Port Huron, Michigan. A at 13.

From 1971 through 1977, Stella engaged in the practice of general medicine in Richmond,

¹As used herein, "A" refers to the Appendix filed by Stella with the Sixth Circuit Court of Appeals which contains Stella's case-in-chief only, and "SA" refers to the Supplemental Appendix filed by defendants with the Sixth Circuit which contains relevant material not included within Stella's Appendix.

Michigan. SA at 22.² Prior to December of 1971, Stella admitted and treated patients at St. Joseph Hospital, Mt. Clemens, Michigan. SA at 21. After losing her staff privileges at St. Joseph Hospital in December, 1971, Stella applied for privileges at Mercy Hospital and Port Huron General Hospital, both in Port Huron, Michigan, and River District Hospital in St. Clair, Michigan. SA at 23-24. Although River District and Port Huron General denied her applications in 1972 and 1974, respectively, Mercy Hospital granted courtesy privileges to Stella in 1974. SA at 25-31.

Early in 1976, the Executive Committee of the Medical Staff of Mercy Hospital convened to consider reappointments to the medical staff. The members of the Committee (most of whom are

²Defendants will not herein attempt to respond to the series of wild allegations made by Stella in her Brief, none of which have any support in the record in this case or in fact. Because of the obvious lack of any legal basis for Stella's appeal, these matters need not be addressed.

defendants in this case) were other physicians at Mercy. SA at 48-49. Only one member of the Committee was engaged in Stella's area of practice, the general practice of medicine. SA at 48-49. Based upon the recommendations of the Department of Medicine and the Credentials Committee and their review of Stella's medical practice at Mercy, the Executive Committee adopted a resolution denying Stella's reappointment to the staff because the quality of her medical care failed to meet hospital standards. SA at 14-15.

At Stella's request, a lengthy appeal hearing before the Executive Committee was held. SA at 36. Prior to the hearing, the Committee furnished Stella with reviews of seventeen (17) representative cases cited by the Medical Staff as examples of the medical misconduct giving rise to the charges. SA at 34. At the hearing, certain physicians testified concerning their criticisms of Stella's professional

performance. Stella, who was represented by counsel, was given a full opportunity to explain her position and to rebut the charges of inadequate medical care advanced against her. SA at 41-42. After full consideration of the evidence presented and the brief submitted by Stella's attorney, the Executive Committee decided that Stella should be denied reappointment to the medical staff. SA at 38-39. The Committee based its decision on specific medical criticisms falling into four general areas: (1) mistakes in diagnoses, (2) inappropriate medical treatment, including unnecessary admissions, unnecessary treatment, inappropriate use of antibiotics, and excessive use of laboratory and x-ray diagnostic studies, (3) interference with post-operative management of surgical patients, and (4) repeated disregard of specialist consultants' recommendations. SA at 14-15.

Stella appealed the Executive Committee's decision to the defendant hospital's Eastern District Regional Board, some of whose members are also defendants in this case. At the Regional Board hearing, Stella was again represented by counsel and afforded an opportunity to explain her position. SA at 41-42. After reviewing all of the evidence presented at the Executive Committee hearing and briefs submitted by Mercy and Stella's counsel, the Regional Board affirmed the Executive Committee's decision not to reappoint Stella to the staff. SA at 40-41.

In her deposition, Stella admitted that Mercy's decision to deny her reappointment was based upon a concern about her professional capabilities. Stella acknowledged that the doctors at Mercy were upset that she "didn't follow specialists' advice when they were brought in as consultants," and that "there was basically a difference of opinion between [her] and the

Executive Committee on when [she] should follow specialists' advice." SA at 43. "The big basis for the clash, the disagreement, between [Stella] and the Executive Committee," she further admitted, "was a difference in opinion in the handling of patients' treatment. The follow-up of the patient. A difference of opinion." SA at 44.

Stella knows of no other physician that has been excluded from the practice of medicine at Mercy Hospital as a result of the alleged conspiracy. SA at 51-53. Indeed, with respect to her claim against Mercy, Stella emphasizes that she is referring "not to anybody else's problems I'm referring to my problems." SA at 54-55. Furthermore, no member of the public suffered injury as a result of Stella's loss of privileges at Mercy. Stella states that, after she closed her private practice in Richmond, her patients "obviously" found other doctors to serve them. SA at 56. After Stella left Richmond,

Michigan, her practice was essentially taken over by another physician. SA at 45-46. "A good number of patients went to this new M.D. and some were absorbed by the other ones." SA at 47.

On December 14, 1977, the Michigan Attorney General brought an action against Stella before the Michigan Medical Licensing Board, seeking the revocation of Stella's license to practice medicine in Michigan. SA at 1. On September 2, 1981, the Attorney General dismissed this action against Stella without prejudice because, after leaving Michigan to reside in California, Stella had failed to apply to renew her license. SA at 11. Stella is currently working and licensed to practice medicine in California.

On November 14, 1978, plaintiff Stella, represented by counsel, filed an action against defendants in St. Clair County Circuit Court for the State of Michigan. In her Complaint, Stella

claimed, inter alia, that defendants engaged in sexual discrimination, tortiously interfered with her "economic pursuits", and breached her employment contract by denying her reappointment to the medical staff at Mercy Hospital, Port Huron, Michigan. However, this action was thereafter dismissed voluntarily by Stella.

Stella, represented by new counsel, subsequently filed this action. A at 1. Approximately one year after this action was filed, Stella's counsel withdrew from the case. A at 2. Since that time, Stella has prosecuted this action as an in propria persona plaintiff, filing numerous pleadings and deposing several persons. A at 4. Defendants took Stella's deposition on June 15, 1981, at which deposition Stella was represented by counsel. SA at 19-20.

On October 29, 1981, almost two years after initiating this action, Stella filed a Motion for Joinder, requesting the District Court to add St. Joseph Hospital, River District Hospital, and

Port Huron General Hospital as co-defendants (hereinafter collectively referred to as the "Non-joined Hospitals"). Stella thereby intended to attack the refusal of these hospitals to grant her medical staff privileges, which refusals occurred several years before Mercy's and 8-10 years before the date of her Motion. A at 3.

On April 5, 1982, after the close of discovery, the District Court entered an order denying Stella's Motion for Joinder, granting defendants' Motion for Summary Judgment, and ruling that Stella's various other procedural motions were thereby rendered moot. A at 16-20. With respect to the Motion for Joinder, the District Court concluded that "even assuming plaintiff's claims against these hospitals were legally sufficient on their face, . . . said claims are barred by the four-year statute of limitations." A at 19.

In granting Mercy's Motion for Summary Judgment, the District Court found that

"Plaintiff admits and there is overwhelming documentation . . . to support the thesis that plaintiff's suspension of staff privileges was based solely on irreconcilable differences of opinion on what constitutes appropriate or even standard medical treatment," and that "under no circumstances can these considerations of utmost medical importance be construed to form the basis or nucleus for an 'antitrust conspiracy.' "

A at 20. The District Court further held that Stella "failed to show in any pleading that the suspension of her staff privileges at Mercy Hospital prejudiced the public interest by substantially or significantly affecting commerce, . . . or more specifically the practice of medicine in Port Huron or southeast Michigan", and that she had "failed to show a genuine issue of fact as to whether the alleged conspiracy had any effect on competition in derogation of the Sherman Act." A at 20.

Thus, the District Court's decision was based on two separate and independent bases: (1) the absence of any evidence probative of the existence of an antitrust conspiracy, and (2) the absence of any evidence that defendants' actions caused significant injury to the public or to the nature of competition in any relevant market. The court held that either of these flaws alone would have been sufficient to defeat Stella's claim as a matter of law.

Stella appealed this decision to the Sixth Circuit Court of Appeals. Stella addressed the Sixth Circuit (as she has this Court) regarding not only her Sherman Act claims and the District Court's refusal to join additional defendants, but also certain alleged improprieties by defendants and officials of the State of Michigan in connection with what Stella has called the "Administrative Court." See, e.g., Stella's "Statement on Appeal" at 5-7, 14-19. These unsupported and erroneous allegations relate to

actions in connection with the Michigan Attorney General's efforts to revoke Stella's medical license. However, that licensing action is not a part of this case, the events therein are nowhere raised in Stella's Amended Complaint, and the state officials involved therein are not parties to this case. For this reason, defendants have not responded to these allegations of Stella.

The Sixth Circuit affirmed the District Court on October 25, 1982, stating that "the plaintiff utterly failed to proffer sufficient facts to show that the defendants willfully conspired to unreasonably restrain competition . . . or that defendants conspired with predatory intent and without legitimate business reasons to maintain a monopoly. . . ." The Court held that "all facts contained in this case . . . show that the defendants' conduct was motivated by understandable and legitimate business and medical reasons."

The Sixth Circuit reached its decision without oral argument, stating that "the questions on which the case depends are so unsubstantial as not to need further argument."

The Sixth Circuit denied Stella's Petition for Rehearing on November 24, 1982, and issued its mandate on November 29, 1982.

SUMMARY OF ARGUMENT

The grounds stated by Stella for this Court's jurisdiction on appeal are baseless. 28 USC § 2403(a), cited by Stella, does not provide for a right of appeal to the Supreme Court. An appeal as of right to this Court arises only in connection with a decision of a lower court regarding the constitutionality of a state or federal statute. 28 USC § 1254(2). Yet no decision regarding the constitutionality of any statute was made by the Sixth Circuit below.

Nor does a proper basis exist for this Court to grant certiorari pursuant to 28 USC §

1254(1). The statutory and constitutional provisions cited by Stella in her statement of the issues on appeal are facially irrelevant to the antitrust issues in this cause, and were not raised below or in Stella's Amended Complaint. Moreover, the heart of Stella's petition concerns the specific factual circumstances underlying her grievance. These circumstances were carefully considered by both the District Court and the Sixth Circuit Court of Appeals and were found not to create a dispute of material fact. These factual arguments do not merit the attention of this Court.

The Sixth Circuit based its decision on well-accepted antitrust principles relating to what is required to state a cause of action for an unreasonable restraint of trade or unlawful monopolization. There is no conflict between the circuit courts on this issue, and no important question presented which justifies the grant of certiorari.

ARGUMENT

A. Plaintiff Has No Right To Appeal.

Stella has denominated her action as an appeal as of right, not a petition for certiorari. However, there is no possible basis for an appeal as of right in this cause.

Appeals may be made to this Court as of right only from a lower court decision finding a federal or state statute unconstitutional. 28 USC §1252, 28 USC §1254. Stella admits in her statement of jurisdiction that the Sixth Circuit made no decision either upholding or denying the constitutionality of any statute.

In any event, this whole case from the start has included only allegations of violations of the antitrust laws by defendants. No issues relating to the constitutionality of a statute were raised in Stella's Amended Complaint, or even in her Brief on Appeal.

Unquestionably, Stella does not possess an appeal as of right in this case.

B. This Court Should Decline To Grant Stella's
Petition For Writ of Certiorari.

Stella drafted her pleading as if it were a Jurisdictional Statement on appeal. However, since Stella did cite without explanation 28 USC §1254(1), relating to jurisdiction on petition for writ of certiorari, and because of Stella's current in propria persona status, Stella's brief will be treated, alternatively, as a petition for writ of certiorari.

Yet, this interpretation yields no better reason for this Court's review of Stella's claim. The issues raised by Stella are frivolous and arise from a basic misreading of the statutes Stella cites. The decision of the Sixth Circuit from which Stella appeals consists of the straightforward application of well-settled antitrust principles to the particular facts of this case, and presents no questions which merit this Court's attention.

The specific issues raised by Stella are obviously frivolous. She most prominently attacks the Sixth Circuit's affirmance of the District Court's denial of her Motion for Joinder. The Court held the Motion was barred, since the claims she alleged against the Non-joined Hospitals arose more than four years prior to her motion. Stella does not dispute this, but argues that the four-year statute of limitations under the antitrust laws is improper because "a statute of limitation cannot properly be applied to the prosecution of a felony", Stella Brief at 5, and because 28 USC §2415(c) provides that "nothing herein shall be deemed to limit the time for bringing an action to establish title to, or right of possession of, property." Stella argues that her medical staff privileges at the defendant hospital was "a property right" and therefore the provisions of 28 USC §2415(c) apply herein.

Both arguments are, of course, simply in error. This is not a criminal, but a civil case,

and the four-year statute of limitations unquestionably applies. Section 2415(c) concerns actions brought by the United States government regarding the government's title to actual property, as opposed to contract rights. It could not apply to a matter such as medical staff privileges possessed by a private individual even if, arguendo, such staff privileges were considered a property right for purposes of due process analysis. In any event, due process analysis would not apply here, since Mercy is a private hospital, and its termination of Stella's privileges do not constitute state action subject to the restraints of the due process clause. See Jackson v Norton Children's Hospitals, Inc, 487 F2d 502, 503 (6th Cir 1973), cert den, 416 US 1000 (1974). Finally, of course, Stella's case is not brought under a due process theory, but under the antitrust laws, and, as the Sixth Circuit noted, her "past claims of sexual discrimination and due process violations are also

bald allegations made without any supportable facts."

Stella's request that this Court review "criminal conduct by the Attorney General of the State of Michigan", Stella Brief at 5, also pertains to matters not properly part of this case, since it concerns issues not in the Amended Complaint and the conduct of persons not parties to this litigation. Stella's suggestion that summary judgment violates the Seventh Amendment protection of the right to jury trial of course contravenes long-settled principles.

The substance of the opinions of both the Sixth Circuit and the District Court, largely ignored by Stella in her brief, does not present significant questions for this Court to review. These decisions simply applied well-established antitrust principles to the facts presented in this case.

The legal principles underlying the rejection of Stella's §1 claim are straightforward; the

decision to terminate a physician's staff privileges, when made for medical reasons, especially when made by a group of physicians who are largely not competitors of the plaintiff, is to be judged under the standards of the Rule of Reason. When no facts are presented to suggest that the termination affected the nature of competition in a relevant market, and no evidence is presented as to the existence of a conspiracy motivated by anticompetitive aims, then judgment for defendants is compelled.

These principles represent the consensus of the various circuit and district courts which have considered these issues. See, e.g., Robinson v Magovern, 521 F Supp 842 (WD Pa 1981), aff'd, 688 F2d 824 (3d Cir 1982); Williams v Kleaveland, 534 F Supp 912 (WD Mich 1981); Pontius v Children's Hospital, 552 F Supp 1352 (WD Pa 1982); Dos Santos v Columbus-Cuneo-Cabrini Medical Center, 684 F2d 1346 (7th Cir 1982); McElhinney v The Medical Protective Co, 549 F Supp 121 (ED Ky 1982).

Stella makes only one attack on these principles, suggesting that the action of the defendants was a group boycott and therefore per se illegal. It is well established under the principles cited again and again by this Court that per se analysis applies only to "practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use." Northern Pacific Railway Co v United States, 356 US 1,5 (1958). Where the defendants are not acting horizontally as competitors of the plaintiff, where price is not involved, and where there exist substantial medical and competitive benefits which can arise from self-regulation, the Rule of Reason is the appropriate standard. See, e.g., Robinson, supra, 521 F Supp at 919-920.

The implication of per se analysis, of course, would be that any medical staff privileges decision, even when taken to prevent an obviously medically deficient physician from endangering patients, is a violation of the antitrust laws. No court has or possibly could reach such a decision.

Stella's §2 claim (which she did not discuss in either her Sixth Circuit pleadings or her Jurisdictional Statement) is even more easily disposed of. Stella never has alleged or attempted to demonstrate the possession of or attempt to achieve monopoly power by any defendant. See, e.g., United States v Grinnell Corp, 384 US 563 (1966); United States v Aluminum Co of America, 148 F2d 416 (2d Cir 1945).

Thus, there are no important legal issues presented here. The application of these principles to the facts of this case, an issue on which the District and Circuit Court agreed,

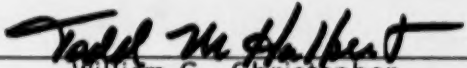
does not merit a grant of certiorari. "We do not grant certiorari to review evidence and discuss specific facts." United States v Johnston, 268 US 220, 227 (1925).

CONCLUSION

For the foregoing reasons, Stella's appeal should be dismissed and, if treated as a petition for writ of certiorari, a writ of certiorari should be denied.

Respectfully submitted,
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